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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In re:)
CIRCUIT CITY STORES, INC., et al.,) Chapter 11
Debtors.) Case No. 08-35653-KRH
) (Jointly Administered)
)
CARMAX AUTO SUPERSTORES, INC.,)
Plaintiff,) Adversary Proceeding
v.) Case No. _____
CIRCUIT CITY STORES, INC.,)
Defendant.

COMPLAINT

CarMax Auto Superstores, Inc., d/b/a CarMax (“CarMax”), by counsel, for its Complaint against Circuit City Stores, Inc. (“Circuit City”) states as follows:

1. CarMax is a Virginia corporation with its principal place of business in Richmond, Virginia. CarMax is in the business of selling pre-owned automobiles.

2. Circuit City was a Virginia corporation with its principal place of business in Richmond, Virginia. Before its liquidation in this case and termination by the State Corporation Commission, Circuit City was in the business of selling consumer electronics.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. § 1409(a).

4. When it was originally formed, CarMax was a direct wholly owned subsidiary of Circuit City.

5. CarMax operates a location in Raleigh, North Carolina located at 8520 Glenwood Avenue, Raleigh, NC 27612 (the “Store Location”).

6. In March of 1994, Circuit City acquired land (the “Original Property”) at the Store Location by two deeds. One deed, recorded in the land records of Wake County, North Carolina (the “Land Records”) at Book 6045, page 626, conveyed 14.976 acres to Circuit City, and the other deed, recorded in the Land Records at Book 6056, page 630, conveyed 0.0265 acres to Circuit City.

7. In connection with its development of the CarMax store at the Store Location, Circuit City dedicated a portion of the Original Property to the City of Raleigh (the “City”) for the construction and maintenance of a road known as CarMax Trail, and dedicated other portions of the Original Property to the City for other public rights of way that are not at issue here.

8. When it dedicated CarMax Trail to the City, however, Circuit City reserved a one foot strip running along the northern side of CarMax Trail for itself, and retained 14.201 acres for the development of the CarMax store (such 14.201 acres, the “Site”). A copy of the Dedication Plat recorded in the Land Records at Book 1994, page 410 is attached as Exhibit A.

9. Subsequently, in or about November of 1994, Circuit City conveyed the Site to CMNC Limited Partnership (“CMNC”). CMNC simultaneously leased the site back to Circuit City (the “Lease”).

10. In or about 1998, the City abandoned CarMax Trail.

11. A true and accurate copy of the resolution abandoning the right of way is attached as Exhibit B.

12. Under North Carolina law, when the right of way was abandoned, the right of way reverted to the adjoining property owners, each owner being entitled to the portion of the road adjoining its property to the center line of the road.

13. One half of the road (the “Southern Road Portion”), therefore joined with and became part of the Site, which was owned by CMNC. .

14. The other half of the road joined with the one foot strip (together, the “CarMax Trail Asset”) that Circuit City reserved along the northern line of CarMax Trail.

15. Upon information and belief, Circuit City has not conveyed its interest in the CarMax Trail Asset to any other party, and Circuit City remains the owner of record of the CarMax Trail Asset.

16. On or about May 21, 2002, CarMax and Circuit City entered into a Separation Agreement (the “Separation Agreement”) which made CarMax an independent, separately traded public company.

17. A true and accurate copy of the Separation Agreement is attached hereto as Exhibit C.

18. Pursuant to Section 2.2 of the Separation Agreement, Circuit City agreed to transfer, convey, assign and deliver all of its interest in real property set forth on Schedule 2.2(a) to CarMax.

19. The Store Location, including the CarMax Trail Asset, is listed on Schedule 2.2(a) as Loc. No. 07102.

20. Pursuant to the Separation Agreement, Circuit City assigned its interest in and to the Lease to CarMax on or about May 22, 2002.

21. Additionally, Section 2.7(c) states:

If subsequent to the Redemption Date, Circuit City Stores shall either (i) receive written notice from CarMax or (ii) determine that certain specified assets of Circuit City Stores or a Circuit City Subsidiary that properly constitute CarMax Group Assets were not transferred to [CarMax] on or prior to the Redemption Date, then, as soon as commercially practicable thereafter, Circuit City Stores shall transfer and deliver, or shall cause the applicable Circuit City Subsidiary to transfer and deliver, any and all of such assets to [CarMax] without the payment by [CarMax] of any consideration therefor.

Separation Agreement § 2.7(c) (emphasis added).

22. On or about January 30, 2008, CarMax and Raleigh NC Associates, successor in interest to CMNC, amended the Lease to add the Southern Road Portion to the description of the property subject to the Lease.

23. On July 9, 2010, CarMax sent written notice to Circuit City that the CarMax Trail Asset was not properly conveyed to CarMax as it should have been pursuant to the Separation Agreement (the “Notice Letter”). A true and accurate copy of the Notice Letter is attached hereto as Exhibit D.

24. Pursuant to the Separation Agreement, Circuit City is obligated to transfer or deliver or cause the applicable Circuit City Subsidiary to transfer and deliver the CarMax Trail Asset to CarMax as soon as commercially practical after receipt of CarMax's notice.

25. Circuit City and/or its attorneys or agents received the Notice Letter on or about July 13, 2010.

26. A commercially practical period of time has elapsed since Circuit City and/or its attorneys or agents received the Notice Letter.

27. To date, Circuit City has not transferred and delivered, or caused the applicable Circuit City Subsidiary to transfer and deliver the CarMax Trail Asset to CarMax.

28. Accordingly, CarMax respectfully seeks a declaratory judgment that Circuit City is obligated to transfer or deliver or cause the applicable Circuit City Subsidiary to transfer and deliver the CarMax Trail Asset to CarMax, as well as specific performance requiring Circuit City to transfer or deliver the CarMax Trail Asset to CarMax.

29. Furthermore, CarMax seeks injunctive relief, temporarily and permanently enjoining Circuit City or its agents, attorneys, or subsidiaries from transferring the CarMax Trail Asset to any other entities other than CarMax.

WHEREFORE CarMax Auto Superstores, Inc. respectfully requests the following relief:

(a) That this Court determine and adjudicate the rights of CarMax and Circuit City to the CarMax Trail Asset;

(b) That this Court find and declare that, Circuit City is obligated to transfer or deliver or cause the applicable Circuit City Subsidiary to transfer and deliver the CarMax Trail Asset to CarMax;

- (c) That this Court order Circuit City to perform its obligations under the Separation Agreement by transferring and delivering the CarMax Trail Asset to CarMax;
- (d) That this Court temporarily and permanently enjoin Circuit City and its agents, attorneys or subsidiaries from transferring the CarMax Trail Asset to any other entities other than CarMax; and
- (e) That this Court award CarMax such other and further relief as the Court deems just and proper.

Dated: Richmond, Virginia
August 24, 2010

CARMAX AUTO SUPERSTORES, INC.

/s/ W. Alexander Burnett

By: _____
Counsel

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was filed and served this 25th day of August, 2010, electronically using the Court's ECF System, was sent by electronic mail to circuitcityservice@mcguirewoods.com and project.circuitcity@skadden.com, and was sent by first class mail, postage prepaid, to the entities at the addresses indicated below:

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/s/ W. Alexander Burnett

By: _____
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